

# Agenda

## Item #7



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: July 10, 2006

Re: Audit of Barbara Merrill Campaign/Recommendations of Staff

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This memo is intended to supplement the audit report of the Barbara Merrill campaign by further explaining the findings and recommendations of the Commission staff.

### **Background**

Barbara Merrill was an independent candidate for Governor in the 2006 elections. She received \$915,732 in Maine Clean Election Act (MCEA) funding. Overall, the Merrill campaign complied with the major requirements of Maine's campaign finance law: it spent Maine Clean Election Act funds on traditional, legitimate campaign expenditures and mostly disclosed its campaign receipts and expenditures correctly in campaign finance reports. She was the first independent candidate for Governor who qualified for Maine Clean Election Act funding, and received 21% of the general election vote. The Commission staff does not wish the findings in the audit report to detract from Ms. Merrill's accomplishments as a candidate or her successful participation in the Maine Clean Election Act as an independent candidate.

**Additional Comment on Finding No. 1 – Conflict of Interest**

Phil Merrill served as the deputy treasurer of the campaign. He also formed an entity called Mountain Top Productions for the purpose of producing advertisements for the campaign and for buying advertising time and space from media outlets. The campaign paid Mountain Top Productions \$211,215, which included \$109,427 apparently paid as compensation to Mr. Merrill for his production and placement services and \$101,785 paid to Mountain Top Productions as a pass-through to media companies. Mr. Merrill is also the candidate's husband.

Mountain Top Productions had no bank accounts, corporate registration, or tax identification numbers, and appears to have no other clients. Phil Merrill, as deputy treasurer, made payments on behalf of the campaign to Mountain Top Productions which were deposited in his pre-existing business and personal bank accounts. Mr. Merrill has advised the staff that two other individuals, James and Christian Wilfong, were associated with Mountain Top Productions. To the best of our knowledge, James and Christian Wilfong received no compensation from Mountain Top Productions. (The campaign paid Christian Wilfong \$6,300 for video production services that were separate from the campaign's contract with Mountain Top Productions.)

I have attached a February 8, 2007 letter from the candidate explaining the campaign's decision to hire Mountain Top Productions. She states that the campaign hoped initially to engage a different consultant, that she did not have as many options as an independent

candidate, and that the campaign received services from Mountain Top Productions at a discount.

In Finding No. 1, the Commission's auditor, Vincent Dinan, expresses his professional opinion that it is contrary to traditional internal control principles for an individual who is the primary disbursement agent for a large campaign committee also to receive more than \$200,000 in payments from the campaign. He included the comment in the report because he believes that the Commission should encourage publicly funded campaigns for Governor – which may spend more than \$1,000,000 – to meet high standards in its management of public funds. Although he is critical of the arrangement, he notes that it did not result in any misuse of public funds.

Phil Merrill submitted a June 28, 2007 response to a draft of the audit report on behalf of the campaign. He believes that Finding No. 1 is unwarranted and patently unfair, although he does not dispute the factual description in the finding. He points out correctly that the Commission staff has proposed that a candidate should not be able to pay MCEA funds to a family member and the Legislature has rejected the proposal – thus permitting the practice. He argues that the campaign is being criticized unfairly for an arrangement that the Legislature has decided to allow.<sup>1</sup>

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<sup>1</sup> In fact, the Commission first made this proposal in 2007, and it was rejected earlier this year by the Commission's oversight committee. Members of the committee commented that a legislative candidate ought to be allowed to pay a small amount (\$200) to a family member for campaign services such as creating a website for the campaign. The committee's discussion did not contemplate a gubernatorial candidate paying a spouse more than \$100,000 in public funds.

The auditor's opinion is not that Phil Merrill, as the candidate's husband, must provide his services on a volunteer basis. Rather, the opinion is that it is a bad management practice for any individual (regardless of relationship to the candidate) to serve both as a principal vendor to the campaign and to be a primary disbursement agent for the campaign. I believe that is a reasonable comment to make in the context of an audit report.

I also wish to raise my own concern about the forthrightness of the campaign's financial reporting, because it goes to the sufficiency of current legal requirements for disclosing campaign expenditures. More than one-ninth of Barbara Merrill's total campaign expenditures were paid to her husband as compensation for his services, but one would not know that by reading her campaign finance reports. Mr. Merrill's business is listed only as Mountain Top Productions without further explanation.

One major purpose of Maine's campaign finance law is public disclosure – both of the sources of a campaign's revenue and how it is spent. We believe a publicly funded campaign is under a special obligation to provide taxpayers with a clear understanding of how their tax dollars have been spent in a political campaign. If it was publicly known that the campaign was making large payments to Phil Merrill as a principal of Mountain Top Productions, it seems likely that this arrangement would have been the subject of public comment. Because the arrangement was not known until after the election, there was no discussion of this during the campaign.

The Commission staff has accepted the campaign's reporting of Mountain Top Productions as the campaign's payee within its financial reports.<sup>2</sup> Nevertheless, the lack of any disclosure about the entity's relationship to the candidate's husband did not provide the public with the full disclosure that many would prefer for a publicly funded candidate for Governor. By way of comparison, when David Emery was considering exploring a run for Governor in July 2005, he wrote a letter asking the Commission whether his campaign would be permitted to pay his own polling and statistical analysis firm if he were a MCEA candidate. Mr. Emery's inquiry acknowledged the sensitivity of a candidate using public funds to reimburse his own company for rendering campaign services.

#### **Additional Comment on Finding No. 5 -- Incomplete Expenditure Documentation**

MCEA candidates are required to obtain and keep two documents for every expenditure over \$50: a proof of payment to the vendor (*e.g.*, a cancelled check) and a vendor invoice.

The precise statutory requirement is:

**12-A. Required records.** The treasurer shall obtain and keep:

- A. Bank or other account statements for the campaign account covering the duration of the campaign;
- B. A vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more; [underscoring added] and
- C. A record proving that a vendor received payment for every expenditure of \$50 or more in the form of a cancelled check, receipt

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<sup>2</sup> Since the campaign's payments to Mountain Top Productions were, in fact, transfers into bank accounts which made no reference to Mountain Top Productions, it is arguable that the reporting of Mountain Top Productions as the payee does not meet the statutory requirement for candidates to report "the name of each payee." (21-A M.R.S.A. §1017(5))

from the vendor or bank or credit card statement identifying the vendor as the payee.

The treasurer shall preserve the records for 2 years following the candidate's final campaign finance report for the election cycle. The candidate and treasurer shall submit photocopies of the records to the commission upon its request. [21-A M.R.S.A. §1125(12-A)]

In Finding No. 5, the audit report concludes that the campaign has not obtained a vendor invoice that meets this standard for nine expenditures totaling \$110,397 listed in Exhibit II of the report. All of these expenditures relate to advertising purchased at five media outlets. (The three expenditures to Mountain Top Productions in Exhibit II correlate to four payments made to WCSH/WLBZ and WMTW.) The campaign has provided proof of payment (cancelled checks) for these expenditures. The Commission staff does not question that these expenditures were campaign-related, but believes nevertheless that it is a serious obligation of MCEA candidates to obtain and keep the expenditure documentation that is required by law.

In keeping with standard audit practice, the Commission mailed a draft audit report to the campaign on June 15, 2007. One purpose of the draft report was to invite the campaign to respond to the preliminary findings of the Commission staff in the hope that the findings (and recommended penalties) could be eliminated from the final audit report. I have attached the June 15, 2007 cover letter for the draft audit report, which included an explicit invitation to submit additional documents or explanation. The letter offers to postpone this matter until the Commission's August meeting to provide the campaign with additional time, if necessary.

In his June 28, 2007 response, Phil Merrill did not submit additional documents or explanation of specific expenditures. Rather, he argues generally that the documentation which the campaign previously submitted to the auditor should be viewed as adequate. Mr. Merrill refers to the documents as logs because they list a large number of advertising purchases (including date and time) with smaller dollar amounts associated with each purchase. He correctly notes that "it is difficult to tie any ad to a specific check" because the amounts charged to the campaign in the logs do not correspond to the amounts of the campaign's payments to the stations. (Please see attached example from WCSH.)

Mr. Merrill notes that he obtained "declarative statements" from some broadcast stations linking the amounts of payments made by the campaign to particular advertising purchases listed in the logs. Unfortunately, the statements he previously submitted to the Commission were from other vendors – not from the payees listed in Exhibit II (WCSH/WLBZ, the Portland Press Herald, Clear Channel Productions, Portland Radio Group, WMTW).

After reading Mr. Merrill's response, two employees of the Commission, Vincent Dinan and Sandy Thompson, spent about 30 hours reviewing all of the documentation supplied by the campaign for the five vendors. They walked me through the documentation for about one hour. In my opinion, it is possible that the advertising purchases listed in the logs could relate to the payments in Exhibit II, but it is impossible to verify that



connection without some further written confirmation from the broadcast stations or some further explanation by the campaign.

The staff believes it is worth considering whether to assess a penalty of \$500 for this violation. The statutory requirement is that campaigns funded by the MCEA must obtain a "vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more." (21-A M.R.S.A. §1125(12-A), emphasis added) We do not believe the documentation provided by the Merrill campaign meets this standard. The Commission's auditor has applied the exact same standard to the two other general election campaigns which received MCEA funding. Nevertheless, because the expenditures are clearly campaign-related and that the campaign has made some effort to gather the required documentation, we recognize that you may wish to consider not assessing a civil penalty for this violation.

#### **Staff Recommendations**

The staff makes its recommendations on pages 6 and 7 of the audit report, including three findings of violation and civil penalties totaling \$1,500. In response to statements made by Mr. Merrill in his response to the draft audit report, we have withdrawn a proposed finding of violation that the campaign commingled campaign funds with funds in Phil Merrill's business account. Mr. Merrill states that this circumstance was due to an error by his bank.

## Barbara Merrill

265 Lower Road  
Appleton Maine

COPY

February 8, 2007

Vincent W. Dinan

Auditor for the Commission on Governmental Ethics and Election Practices

135 State House Station

Augusta, Maine 04333-0135

Dear Sir:

I have reviewed the issues raised in your letter following the initial meetings in the audit of the spending in my campaign. I am writing to relate to you my thinking in hiring Mountain Top as campaign consultant, producer of all my advertising and buyer of all my advertising.

I qualified for funding at the beginning of June 2006. I was in the race because I was deeply troubled by the direction of state government. This concern had prompted me to write a book. I was running to win, but I was not naive. Incumbent Governors are almost never defeated in Maine and no incumbent has been defeated by an Independent. Furthermore, having early money to spend had been a big factor in Angus King's Independent campaign victory and I knew as a clean election candidate I would be cash starved until late in the campaign. Finally, I was determined to run a very different campaign that focused on the issues and offered the voters a view of my positions on several issues.

Immediately after qualifying and the nomination of Senator Chandler I approached Christian Potholm and asked him to be the political consultant to my campaign. He would have been charged with helping me develop the strategy and design in general terms the message that would be conveyed in all the advertising. We talked about what he would want for these services and he said \$70,000 which would not include the cost of the polls which he would conduct or the design of the advertising or placement of the ads which would have been done by a political media house. The polling by Chris would have run another \$40,000 to \$70,000 and to produce 6 to 10 different ads and place them on TV and the radio would have been at minimum \$150,000. This would amount to more than \$260,000 more than half the money that I could be certain would be available and much of it would need to be spent during the period when I could be relatively certain I would not be getting matching funds.

Because of these concerns I had mixed feelings when Chris decided he would be making his services available to Baldacci instead of me. However, my conversations with Chris helped me focus on what I needed. I needed someone with wide Maine campaign experience, someone with experience in all aspects of campaigns including producing ads and purchasing time and someone who could also oversee any polling I decided to do. Also if possible this person should be very familiar with the major public policy issues facing the state because I wanted ads which would be very issue oriented. The only person available that fit that bill was Phil Merrill. Phil's Maine campaign experience started as southern Maine field organizer for the Hathaway's

successful campaign in for the US Senate in 1972. In 1976 Phil managed Senator Muskie's successful reelection campaign. Since then he has played a central role in campaigns for Governor Joe Brennan, Congressman Mike Michaud, along with campaigns for several state offices. In fact Phil gave up working for the Maine Senate PAC as a political consultant when I announced I was running for Governor as an Independent. On top of that Phil had managed the Democrats redistricting campaigns over 2 decades and run several referendum campaigns. Over the years Phil provided these services in his own name, then as the Kennebec Group. In recent times he organized Mountain Top Video in which he is the principal.

Phil also is a former State Senator and has over 12 years experience working for the Maine Senate as legal counsel. There are few if any people in Maine with his knowledge of state issues and the history of who has supported and opposed these issues. There is one other consideration which needs to be understood about my decision to hire Mountain Top and Phil Merrill. Most knowledgeable professionals who work in campaigns work exclusively for one party or the other. Very few political consultants are willing to go outside that and work for an Independent because the political party candidates will then shun them. Phil himself had never worked for any candidate except Democrats, but he was supporting my campaign and the mere fact that I was running as an Independent would keep him from getting Democratic work in Maine. So he was uniquely available.

I was of course aware of the fact that because I am married to Phil Merrill this could be a matter of political interest. However, I knew that the Ethics Commission had considered prohibiting hiring relatives and that idea had not been incorporated into the rules. So as Jim Webster and I approached this we knew that no one could fairly argue that Phil was not qualified. So we sat down with Phil to arrive at a price for the services of Mountain Top Video which would be well below what I would pay for similar services from any political professional. I wanted to steer between Phil providing the services at such a low rate that it could be characterized as an in kind contribution and still having an arrangement which by any measure would gain me more value per dollar spent than any other campaign.

Mountain Top produced an ad within days of our agreement. They produced 10 issue campaigns ads and 30 minute TV show. Everywhere I went in the campaign people spoke favorably of the campaign and the proof is in the results. The Democratic candidate and his party spent about a million on ads and his numbers actually were lower on election day than in the opinion polls in August. The Republican candidate's numbers remained static from fall to election day after he and his party spent a million dollars.. The Green candidate got 2% more of the vote in 2008 than she did in 1998 when she had no money to spend on advertising. I had less money than any of my 3 competitors and my numbers went up from below 5% in the polls in August to 21% on election day and our polling showed this movement very late when we finally got the money to put on a real advertising campaign.

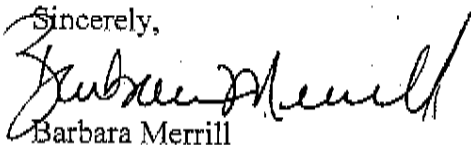
Even if one assumes that I started equally with each of the other campaigns I got more voters per dollar spent than any other campaign. Furthermore, I not only produced the most spots, the most talked about and written about spots and a thirty minute commercial I did it while posting a very favorable ratio of total dollars spent to money spent on direct purchase of TV and radio time and newspaper space. Any of these objective measures prove that the Merrill campaign spent it's money very effectively.

I would also like to address two other issues raised in your letter. Phil was the Assistant Treasurer of my campaign. Jim Bowers was the Treasurer. Neither was paid for their work in

this capacity. Phil was in much closer touch with the campaign on a day to day basis. The way decision making on spending worked was that general spending matters were discussed by me and the campaign manager and if it involved media with Phil. Then I made the final call. On specific spending within these guidelines the campaign manager decided. The expenditures to Mountain Top were all made consistent with the agreement negotiated at the outset. The major exception being the 30 minute infomercial which was agreed to on the run as we struggled to find effective means of allowing the voters to get to know me better. That program was developed by Mountain Top withing 4 days of being suggested at a meeting of my supporters. In the 3 business days between the decision of do it and actual production, Mountain Top negotiated with several studios over a taping location, wrote three iterations of scrips for what was said during the whole half hour, negotiated with every TV station to buy 30 minute spots during the best time slots available, provided direction and all other support for the taping and then managed, working with the campaign, to get the program distributed around Maine in time for airing.

Finally you raised the issue of the detail, or the lack of it in the actual invoices submitted from time to time by Mountain Top. One of our goals in the arrangement we negotiated with Mountain Top was that we would maximize certainty as to how much these services would cost the campaign. Once that agreement was in place we had concerns only that the payments to Mountain Top not be so ahead of work that it would limit our ability to get on the air with paid advertising early in the campaign or to be so far behind in payment to Mountain Top that someone could argue we were in fact the beneficiary of a loan from them. Detailed invoices were not needed for this because the decision making circle was very small and everyone in it knew exactly what Mountain Top was doing. Dick Dyer, the campaign manager, myself were connected with everything Mountain Top did. When filming was done I was there and the campaign had to make room on my schedule. When new ads were cut they were reviewed by the same group. When time was bought it was reported in advance to the campaign and Mountain Top arranged that the originals of the invoices from the TV stations would be sent to the campaign so the campaign could know what space had been bought on which station. Armed with this information the campaign manager knew whether the billing from Mountain Top was within the general guidelines of timeliness that are outlined above.

Sincerely,



Barbara Merrill



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

Cover  
letter to  
draft report

June 15, 2007

The Honorable Barbara E. Merrill  
265 Lower Road  
Appleton, ME 04862

Dear Ms. Merrill:

The Commission on Governmental Ethics and Election Practices (Commission) has completed its audit of your 2006 campaign finance reports and related activities. A copy of the draft report is enclosed for your review and comment. \*

Please note there are five deficiency audit findings contained in the report. You may respond in writing, and we will include your comments in the final report we submit to the Members of the Commission. Please submit your comments and any additional documentation you are able to locate to me by Monday, July 2, 2007.

It should be noted that we asked several times for all documentation that supported Merrill campaign expenditures, and the deficiencies discussed in the report indicate that many of the items requested were not supplied. We continue to believe, however, that documents -- particularly the vendor invoices discussed in Finding No. 5 -- should be available that would favorably impact the audit results, and we will consider such items if you submit them to us by July 2. ] \*

This letter also serves as formal notice to you, and the campaign's treasurer and deputy treasurer, that based on information and documentation your campaign has made available, the Commission staff is recommending that the Commission find you in violation of provisions of the Election Law and assess penalties totaling \$1,500. This matter currently is scheduled for the Commission's next meeting on July 16, 2007 at 9:00 a.m. We suggest that a representative of the campaign be present at the meeting to answer any questions of the Commission and to respond to the proposed findings and penalties.

The staff may adjust its recommendations based on information or documentation you provide by July 2. If you wish to request additional time to gather the remaining documentation or to prepare further explanation, please explain the need for additional time in a letter or e-mail, and the staff will consider scheduling this matter for the Commission's August meeting.

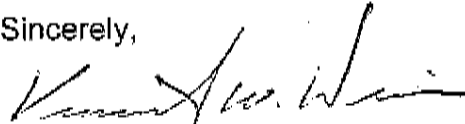
**Hon. Barbara E. Merrill**

**June 15, 2007**

**Page 2**

Call me at (207) 287- 4727 if you have questions or need additional information concerning any of the audit issues outlined in the report.

Sincerely,



Vincent W. Dinan  
Commission Auditor

Enclosure

James Bowers, Campaign Treasurer  
Philip Merrill, Deputy Campaign Treasurer  
Beryl Leach, Campaign Manager  
Jonathan Wayne  
Paul Lavin  
Sandy Thompson

## INVOICE



**WCSH**  
**One Congress Square**  
**Portland, ME 04101**  
**Main: (207) 828-6666**  
**Billing:**

www.wcsb.com

Billing Address:

**Barbara Merrill Gov Ind**  
**Attention: Accounts Payable**  
**PO Box 1010**  
**Union, ME 04862**

Send Payment To:

**WCSH**  
**One Congress Square**  
**Portland, ME 04101**

Invoice #	Invoice Date	Invoice Month	Invoice Period
135801-1	08/27/06	August 2006	07/31/06 - 08/18/06

Station	Account Executive	Sales Office	Sales Region
WCSH	Pat Archambault	Maine Regional	Regional

Advertiser	Product	Estimate Number
Barbara Merrill Gov Ind	8/7-8/20	

Contract Dates	Order #	Alt. Order #
8/7/2006 - 8/20/2006	135801	

Billing Calendar	Billing Type
Broadcast	Cash

Special Handling

IDB #	Advertiser Code	Product Code

Line	Start Date	End Date	Description	Start/End Time	MTWTFSS	Length	Spots/ Week	Rate	Type	Ch
1	08/07/06	08/20/06	Morning Report	5a-7a	MTWTF--	:30	4	\$340	NM	WCSH
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>					
	08/07/06	08/13/06	MTWTF--	3	\$340					
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>
	2	M	08/07/06	6:40 AM	Morning Report	5a-7a	:30	INDEPENDENT	\$340	NM
	1	Tu	08/08/06	5:58 AM	Morning Report	5a-7a	:30	INDEPENDENT	\$340	NM
	3	W	08/09/06	5:29 AM	Morning Report	5a-7a	:30	INDEPENDENT	\$340	NM
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>					
	08/14/06	08/20/06	MTWTF--	4	\$340					
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>
	4	Tu	08/15/06	6:54 AM	Morning Report	5a-7a	:30	INDEPENDENT	\$340	NM
	7	W	08/16/06	5:17 AM	Morning Report	5a-7a	:30	INDEPENDENT	\$340	NM
	6	Th	08/17/06	5:55 AM	Morning Report	5a-7a	:30	INDEPENDENT	\$340	NM
	5	F	08/18/06	6:17 AM	Morning Report	5a-7a	:30	INDEPENDENT	\$340	NM
2	08/07/06	08/20/06	NEWS CENTER at NOON 12p-1230p		MTWTF--	:30	4	\$130	NM	WCSH
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>					
	08/07/06	08/13/06	MTWTF--	3	\$130					
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>
	4	M	08/07/06	12:22 PM	NEWS CENTER at NOON (M-fri) 12p-1230p		:30	INDEPENDENT	\$130	NM
	3	Tu	08/08/06	12:28 PM	NEWS CENTER at NOON (M-fri) 12p-1230p		:30	INDEPENDENT	\$130	NM
	9	W	08/09/06	12:25 PM	NEWS CENTER at NOON (M-fri) 12p-1230p		:30	INDEPENDENT	\$130	NM
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>					
	08/14/06	08/20/06	MTWTF--	4	\$130					
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>
	7	M	08/14/06	12:28 PM	NEWS CENTER at NOON (M-fri) 12p-1230p		:30	INDEPENDENT	\$130	NM
	8	Tu	08/15/06	12:21 PM	NEWS CENTER at NOON (M-fri) 12p-1230p		:30	INDEPENDENT	\$130	NM
	10	W	08/16/06	12:26 PM	NEWS CENTER at NOON (M-fri) 12p-1230p		:30	INDEPENDENT	\$130	NM
	6	F	08/18/06	12:20 PM	NEWS CENTER at NOON (M-fri) 12p-1230p		:30	INDEPENDENT	\$130	NM
3	08/07/06	08/20/06	News Center @ 530p	530p-6p	MTWTF--	:30	4	\$320	NM	WCSH
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>					
	08/07/06	08/13/06	MTWTF--	3	\$320					
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>
	3	Tu	08/08/06	5:45 PM	News Center @ 530p	530p-6p	:30	INDEPENDENT	\$320	NM
	1	W	08/09/06	5:57 PM	News Center @ 530p	530p-6p	:30	INDEPENDENT	\$320	NM

We warrant that the actual broadcast information shown on this invoice was taken from the program log. We warrant spots are posted within two minutes of actual airtime. Notwithstanding to whom bills are rendered, Advertiser, Agency, Service, jointly and severally shall remain obligated to pay to station the amount of any bills rendered by station within the time specified, and until payment in full is received by station. Payment by Advertiser to Agency or to Service, shall not constitute payment to this station. This station is an Equal Opportunity Employer.

## INVOICE



Send Payment To:

**WCSH**  
One Congress Square  
Portland, ME 04101

www.wcsb.com

Invoice #	Invoice Date	Invoice Month	Invoice Period
135801-1	08/27/06	August 2006	07/31/06 - 08/18/06
Advertiser	Product	Estimate Number	
Barbara Merrill Gov Ind	8/7-8/20		

Line	Start Date	End Date	Description	Start/End Time	MTWTFSS	Length	Spots/Week	Rate	Type	Ch
	2 F	08/11/06	5:43 PM News Center @ 530p	530p-6p		:30	INDEPENDENT	\$320	NM	
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>					
	08/14/06	08/20/06	MTWTF--	4	\$320					
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>
	5	M	08/14/06	5:45 PM	News Center @ 530p	530p-6p	:30	INDEPENDENT	\$320	NM
	4	Tu	08/15/06	5:48 PM	News Center @ 530p	530p-6p	:30	INDEPENDENT	\$320	NM
	7	Th	08/17/06	5:46 PM	News Center @ 530p	530p-6p	:30	INDEPENDENT	\$320	NM
	6	F	08/18/06	5:44 PM	News Center @ 530p	530p-6p	:30	INDEPENDENT	\$320	NM
4	08/07/06	08/20/06	207	7p-730p	MTWTF--	:30	4	\$250	NM	WCSH
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>					
	08/07/06	08/13/06	MTWTF--	3	\$250					
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>
	3	M	08/07/06	7:15 PM	207	7p-730p	:30	INDEPENDENT	\$250	NM
	1	Tu	08/08/06	7:09 PM	207	7p-730p	:30	INDEPENDENT	\$250	NM
	2	Th	08/10/06	7:12 PM	207	7p-730p	:30	INDEPENDENT	\$250	NM
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>					
	08/14/06	08/20/06	MTWTF--	4	\$250					
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>
	4	Tu	08/15/06	7:12 PM	207	7p-730p	:30	INDEPENDENT	\$250	NM
	7	W	08/16/06	7:12 PM	207	7p-730p	:30	INDEPENDENT	\$250	NM
	6	Th	08/17/06	7:13 PM	207	7p-730p	:30	INDEPENDENT	\$250	NM
	5	F	08/18/06	7:22 PM	207	7p-730p	:30	INDEPENDENT	\$250	NM
5	08/07/06	08/13/06	Meet The Press	9a-10a	-----S	:30	1	\$500	NM	WCSH
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>					
	08/07/06	08/13/06	-----S	1	\$500					
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>
	1	Su	08/13/06	9:17 AM	Meet The Press	9a-10a	:30	INDEPENDENT	\$500	NM
6	08/07/06	08/20/06	Tonight Show	1135p-1235a	MTWTF--	:30	4	\$90	NM	WCSH
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>					
	08/07/06	08/13/06	MTWTF--	4	\$90					
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>
	2	M	08/07/06	12:10 AM	Tonight Show	1135p-1235a	:30	INDEPENDENT	\$90	NM
	3	Tu	08/08/06	11:58 PM	Tonight Show	1135p-1235a	:30	INDEPENDENT	\$90	NM
	4	W	08/09/06	12:01 AM	Tonight Show	1135p-1235a	:30	INDEPENDENT	\$90	NM
	1	Th	08/10/06	12:21 AM	Tonight Show	1135p-1235a	:30	INDEPENDENT	\$90	NM
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>					
	08/14/06	08/20/06	MTWTF--	3	\$90					
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>
	7	Tu	08/15/06		Tonight Show	1135p-1235a	:00		\$90	NM
	See MG 6.8									
	traffic error crossed off log by mistake									
	6	Th	08/17/06	12:20 AM	Tonight Show	1135p-1235a	:30	INDEPENDENT	\$90	NM
	5	F	08/18/06	11:47 PM	Tonight Show	1135p-1235a	:30	INDEPENDENT	\$90	NM
	8	F	08/18/06	12:31 AM	Tonight Show	1135p-1235a	:30	INDEPENDENT	\$90	NM
	MG for 6.7 08/15									

<u>Total Spots</u>	36	<u>Gross Total</u>	\$8,410.00
		<u>Agency Commission</u>	\$1,261.50
		<u>Net Amount Due</u>	\$7,148.50

## Payment Terms 30 Days

We warrant that the actual broadcast information shown on this invoice was taken from the program log. We warrant spots are posted within two minutes of actual airtime. Notwithstanding to whom bills are rendered, Advertiser, Agency, Service, jointly and severally shall remain obligated to pay to station the amount of any bills rendered by station within the time specified, and until payment in full is received by station. Payment by Advertiser to Agency or to Service, shall not constitute payment to this station. This station is an Equal Opportunity Employer.





STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

July 10, 2007

The Honorable Barbara E. Merrill  
265 Lower Road  
Appleton, ME 04862

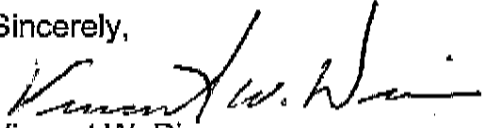
Dear Representative Merrill:

Enclosed please find a copy of the final audit report concerning the Commission's review of your 2006 campaign finance reports and related activities.

We plan to present the report to our members at the July 16, 2007 Commission meeting. Jonathan Wayne will contact you to schedule the appearance of a Merrill campaign representative before the Commission to discuss our findings and recommendations.

Thank you for your cooperation and assistance during the audit process.

Sincerely,

  
Vincent W. Dinan  
Commission Auditor

Enclosure

Cc: James Bowers, Campaign Treasurer  
Philip Merrill, Deputy Campaign Treasurer  
Beryl Leach, Campaign Manager  
Jonathan Wayne  
Paul Lavin  
Sandy Thompson



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

July 10, 2007

**Audit Report No. 2006-GV002**

**Candidate: Representative Barbara E. Merrill  
2006 Independent Candidate for Governor**

**Background**

Representative Barbara E. Merrill was an independent candidate for governor in the 2006 general election. Rep. Merrill was certified by the Commission as a Maine Clean Election Act (MCEA) candidate on June 9, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

**Audit Scope**

Examination of selected candidate contribution and expenditure transactions occurring during the following campaign reporting periods:

- Seed Money
- 42 Day Pre-Primary
- Six Day Pre-Primary
- 42 Day Post-Primary
- 42 Day Pre-General
- Six Day Pre-General
- 42 Day Post-General

Transactions subject to review were those recorded in the candidate's accounting records and reported to the Commission. The audit's purpose was to determine if the identified receipts and payments (1) were properly approved by the candidate or her authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

The Commission distributed a total of \$915,732 to the Merrill campaign during the general election period. Of this amount, \$400,000 was the initial payment for the election, and \$515,732 was paid in matching funds.

## **Audit Findings and Recommendations**

### **Finding No. 1 – Conflict of Interest**

The audit disclosed what we believe was a significant conflict of interest between the Merrill campaign's Deputy Treasurer and the main provider of media services to the campaign.

Philip Merrill, the candidate's husband, served as the campaign's Deputy Treasurer. In that capacity, Mr. Merrill both authorized and disbursed campaign (MCEA) funds for materials and services purchased by the campaign staff. In addition, Mr. Merrill formed an entity called Mountain Top Productions (MTP) for the sole purpose of producing television and radio campaign advertisements, and for purchasing – on behalf of the campaign – television, radio, and print advertising from various media outlets.

Mountain Top Productions became the largest single vendor to the Merrill campaign, with billings of \$211,215, which included \$109,427 apparently paid as compensation to Mr. Merrill for his production and placement services and \$101,785 paid to MTP as a pass through to media companies. MTP was essentially Mr. Merrill himself. The company had no corporate registration, bank accounts, or tax identification numbers, and appears to have no other clients.

Mr. Merrill's dual roles as the campaign's Deputy Treasurer and as the principal vendor to the campaign created, in the auditor's opinion, a critical conflict of interest. Fundamental principles of financial management dictate that there should be an "arm's length" relationship between buyer and seller. Accordingly, the buyer of materials and services cannot also be the seller of such goods and services.

Mr. Merrill was the primary disbursement agent for the campaign. In that capacity, he paid MTP over \$211,000 for production of political advertising and purchase of broadcast and ad space from television, radio, and print media. Payments made by the campaign to MTP were deposited into Mr. Merrill's personal bank accounts. When MTP paid media outlets, the medium of payment was treasurer's checks purchased from a bank by Mr. Merrill.

A matter of some concern to the Commission staff involved the submittal, approval, and payment of MTP invoices. In these circumstances, Mr. Merrill, the vendor, submitted invoices for approval and payment to Mr. Merrill, the Campaign's Deputy Treasurer, who then transferred funds from the campaign bank account into the Philip Merrill bank account. Barbara Merrill informed the auditor that she was always aware of what was being spent. Although there were other campaign officers involved in procurements and disbursements, it was primarily Philip Merrill who made the disbursements on behalf of the campaign.

It is important to note that the auditors did not find evidence of mis-use or mis-appropriation of public funds by the Merrill campaign. All disbursements to MTP were scrutinized, and the auditor determined that payments were supported by cancelled checks or other acceptable payment documentation. The fundamental problem, however, is that the Merrill campaign was funded with

taxpayer dollars, and as such, we believe there was a higher standard of accountability imposed on the candidate and her staff. The lack of appropriate financial controls over campaign funds created the opportunity for wrong-doing, and that should be unacceptable in a publicly financed campaign environment.

*Criteria:* Neither the Maine Clean Election Act nor the Commission's rules prohibits the employment of a candidate's family members as campaign staff. In addition, there is no prohibition against a candidate paying a family member for goods or services provided to the campaign. Finally, the MCEA does not prescribe policies or procedures that dictate the segregation of responsibilities associated with a campaign's financial management practices.

Finding No. 2 – Undocumented Seed Money Contributions; Possible Unreported Contributions; Commingling of Campaign Funds during the Qualifying Period

The Merrill campaign reported receiving \$6,255 in seed money contributions. Our examination of the campaign's banking records, however, found no total deposits in this amount made during the qualifying period. The audit disclosed the following:

- Total deposits into the campaign account during the qualifying period were \$5,385, which implied that \$870 in reported seed money contributions (\$6,255 - \$5,385) were either cashed or deposited into an account other than the campaign account. Records of seed money contributions were incomplete and may not be reliable.
- Campaign records included photocopies of four seed money contributions (Joseph R. Taddeo, Michael P. Towey, Betty K. Howard, Clover Ridge Builders, LLC) totaling \$255 which were not disclosed in campaign finance reports. It is not known if these unreported contributions were used for campaign purposes. If so, the actual total of seed money contributions received by the campaign during the qualifying period could have been \$255 higher, or \$6,510, and the incomplete reporting of seed money contributions failed to comply with the requirements of the MCEA. Also, the contribution from Clover Ridge Builders if used for campaign purposes does not appear to comply with seed money restrictions.
- The Merrill campaign made a telephone transfer of \$1,895 in seed money contributions into the campaign account on April 14, 2006, presumably from another account at the Gardiner Savings Institution. This appears to constitute a commingling of campaign funds with funds in Phil Merrill's business account. The campaign has stated in its response to the draft audit report that the deposit of seed money in the business account was due to a mistake by the credit union.

*Criteria:* 21-A M.R.S.A §1122(9), "A seed money contribution must be reported according to procedures developed by the commission." 21-A M.R.S.A. §1125(12), "participating and certified candidates shall report any money collected [and] all campaign expenditures ... according to procedures developed by the commission." 21-A M.R.S.A. §1016(1), "All funds of a political committee and campaign funds of a candidate must be segregated from, and may not be commingled with, any personal funds of the candidate, treasurer or other officers, members or associates of the committee." 21-A M.R.S.A. §1016(4), "A treasurer shall obtain and keep a receipted bill, stating the

particulars, for every expenditure in excess of \$50 made by or on behalf of ... a candidate ...." The Maine Clean Election Act (21-A M.R.S.A. §1127(1)) also permits the Commission to assess a penalty of up to \$10,000 for any violation of the MCEA.

#### Finding No. 3 – Errors in Documenting and Reporting Money Order Purchases

The Merrill campaign's Seed Money Report included a May 31, 2006 payment of \$500 to Phil Merrill and a May 20, 2006 payment of \$210 to John Simpson for the cash value of one hundred forty-two \$5 money orders purchased for the purposes of qualifying for MCEA funding. This appears to be erroneous reporting.

Transaction costs for money orders (e.g., \$0.46 per money order purchased) are legitimate campaign expenditures. Indeed, if candidates purchase money orders, any transaction costs paid by the candidate must be paid for with seed money and included in campaign finance reports. However, money orders themselves are not expenditures, as they represent merely an exchange of value, cash for a cash equivalent. Generally, when the candidate or a supporter buys a \$5 money order, they are later reimbursed with the \$5 in cash received from the voter making the contribution, so no net expenditure is made.

The initial payment of MCEA funds made to a qualifying candidate is reduced by the amount of unspent seed money. The reporting error may have resulted in an overstatement of seed money expenditures and the overpayment of MCEA funds to the campaign. However, the Commission staff does not believe it is necessary to request rebate of the overpayment, because the campaign returned over \$28,000 that it was authorized to spend.

The purchases of the money orders were also undocumented, so the auditor was unable to confirm the number of money orders purchased or the cost per money order claimed by the campaign. The campaign must have paid some fees for money orders purchased, but those fees do not appear in the reported expenditures for the 42-Day Pre-Primary Report or the Seed Money Report. Finally, the number of money orders purchased (approximately 1,400 according to the campaign) exceeded the number submitted with qualifying contributions (1,321), and the disposition of the remaining 79 is unknown.

*Criteria:* 21-A M.R.S.A. §1016, "Each treasurer shall keep detailed records of all contributions received and of each expenditure that the treasurer or candidate makes or authorizes...." 21-A M.R.S.A. § 1125, "Any money order fees paid by a participating candidate must be paid for with seed money and reported in accordance with commission rules." Commission Rules, Chapter 3, Section 2(4)(C)(3), "This provision does not prohibit a candidate from using seed money to pay the fee for a money order provided the qualifying contributor pays the \$5 amount reflected on the money order as permitted by 21-A M.R.S.A. § 1125(3)."

#### Finding No. 4 – Undocumented Payments for Campaign Expenditures During the Qualifying Period

The audit disclosed five reported campaign expenditures during the qualifying period to family members of the candidate totaling \$2,333 for which there was no documentation of payment. Four of

the five expenditures were supported by vendor invoices. Exhibit I provides the details of the transactions in question. The auditor's review of the campaign account disclosed no payments in these amounts made from the account. A letter from treasurer James Bowers states that apparently the five payments (or perhaps three of the five) were made in cash after 19 seed money contributions were accidentally deposited into the wrong account at Gardiner Savings Institution and, upon discovering the error, Phil Merrill withdrew the equivalent amount of cash from that account to make campaign expenditures.

The lack of documentation raises questions about what funds were used to make the \$2,333 in expenditures, and the troubling possibility that not all contributions received during the seed money period were included in campaign finance reports. If \$5,385 was deposited into the campaign bank account during the qualifying period, and \$2,333 in Exhibit I expenditures were made through funds that were never run through the campaign account (as Mr. Bowers' letter suggests), it appears that the campaign had cash receipts that exceeded the \$6,255 that was disclosed in the campaign's 42-Day Pre-Primary and Seed Money Reports.

If the five expenditures totaling \$2,333 were reported in error and were not in fact made, this would have caused an unwarranted increase in the amount of MCEA funds initially distributed by the Commission to the candidate. If so, the overpayment to the candidate could have amounted to \$2,333 plus \$710 (see Finding No. 3), or \$3,043.

*Criteria:* 21-A M.R.S.A. § 1016(4), "A treasurer shall obtain and keep a receipted bill, stating the particulars, for every expenditure in excess of \$50 made by or on behalf of ... a candidate...." Commission Rules, Chapter 1, Section 6 (3), "Unless specifically exempted under Title 21-A M.R.S.A. Sections 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution." 21-A M.R.S.A. §1016, "Each treasurer shall keep detailed records of all contributions received and of each expenditure that the treasurer or candidate makes or authorizes...." 21-A M.R.S.A. §1125(12-A)(C), "The treasurer shall obtain and keep...a record proving that a vendor received payment for every expenditure of \$50 or more in the form of a cancelled check, receipt from the vendor or bank or credit card statement identifying the vendor as the payee."

#### Finding No. 5 – Incomplete Expenditure Documentation

Campaign expenditures should be, at a minimum, supported by two forms of documentation: (1) a vendor invoice that lists the goods or services purchased and that indicates the campaign purpose for the expenditure, and (2) a cancelled check, cash receipt, or other acceptable proof of payment. Tests of documentation supporting the Merrill campaign's expenditures indicated that nine payments to vendors made during the general election period were inadequately supported by invoices or similar documentation. In all instances the proof of payment was on file, but for expenditures totaling \$178,000, about \$110,000 lacked the necessary invoice documentation. The campaign responded that it has turned over to the Commission all documentation it received from the vendors. It notes that some broadcast stations document the purchases through a log, and it is difficult to link the amounts of the purchases listed in the log to the exact amounts paid to the stations. The Commission staff believes that unless the documentation explains the particular goods and services purchased by the expenditure

it does not meet the statutory requirement. All of the \$110,000 in incompletely documented expenditures was made to media outlets. Exhibit II lists the transactions in question.

*Criterion:* 21-A M.R.S.A. §1016 (3) (C) states that "A treasurer shall keep a detailed and exact account of...all expenditures made by or on behalf of the committee or candidate...." 21-A M.R.S.A. § 1125(12-A)(B), "The treasurer shall obtain and keep...a vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more...."

#### Recommendations:

The Commission staff does not recommend any action specific to the Merrill campaign with regard to Finding No. 1. However, the Commission staff recommends that the Commission consider pursuing an amendment to the MCEA or the Commission's rules to prevent conflicts of interest in the management of campaign financial affairs. Family members who serve as officers of the campaign – particularly in treasury or accounting positions, or any other position that involves authorization and disbursement of campaign funds – should be barred from any commercial relationship with the campaign. Moreover, the Commission's rules should be amended to require gubernatorial campaigns to segregate authority to approve campaign expenditures from the authority to disburse campaign funds. In this manner, the integrity of public funding of the campaigns will have at least minimal protection.

With regard to Findings No. 2 - 4, the staff makes the following recommendations:

- *Inaccurate reporting during the qualifying period.* The Commission should find the candidate, treasurer, and deputy treasurer in violation of 21-A M.R.S.A. §§ 1122(9) and 1125(12) for not accurately reporting contributions received and expenditures made during the qualifying period. The inaccurately reported transactions include up to \$255 in seed money contributions which apparently were received by the campaign but never reported (Finding No. 2), reported expenditures to Phil Merrill and John Simpson totaling \$710 for money orders purchased when the value of the money orders likely was reimbursed to the campaign (Finding No. 3), a reported total of \$2,333 in expenditures to members of the candidate's family listed in Exhibit I for which no proof of payment exists (Finding No. 4), and no reporting of transaction fees for money orders purchased to qualify for MCEA funds. The Commission staff recommends that under 21-A M.R.S.A. §1127(1), the Commission assess a penalty of \$500 against the candidate, treasurer, and deputy treasurer for this violation.
- *Incomplete record-keeping during the qualifying period.* The Commission should find the candidate, treasurer, and deputy treasurer in violation of 21-A M.R.S.A. §1125(12-A) for not keeping complete documentation of contributions and expenditures during the qualifying period, including financial institution records for some seed money contributions (\$1,895 in seed money contributions transferred from another bank account and for other reported seed money contributions which were never deposited in the campaign account) (Finding No. 2); proof of payment for expenditures totaling \$2,333 (Finding No. 4), and any records relating to the purchase of money orders used for MCEA qualification, including transaction costs which are required to be paid for with seed money (Finding No. 3). The Commission staff

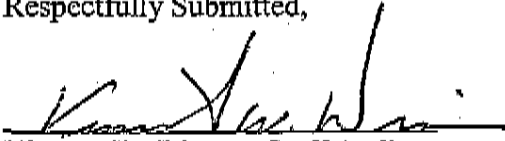
recommends that under 21-A M.R.S.A. §1127(1), the Commission assess a penalty of \$500 against the candidate, treasurer, and deputy treasurer for this violation.

With regard to Finding No. 5, the staff recommends that the Commission should find the candidate, treasurer, and deputy treasurer in violation of 21-A M.R.S.A. §1125(12-A) for not obtaining and keeping vendor invoices for about \$110,000 in MCEA expenditures listed in Exhibit II (Finding No. 5). The Commission staff recommends that under 21-A M.R.S.A. §1127(1), the Commission assess a penalty of \$500 against the candidate, treasurer, and deputy treasurer for this violation.

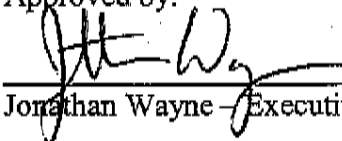
Candidate's Comments

Comments on the audit findings and recommendations by Philip L. Merrill, Deputy Treasurer of the Merrill campaign, made on behalf of the candidate, are attached.

Respectfully Submitted,

  
\_\_\_\_\_  
Vincent W. Dinan – Staff Auditor

Approved by:

  
\_\_\_\_\_  
Jonathan Wayne – Executive Director



## EXHIBIT I

**BARBARA MERRILL CAMPAIGN****Schedule of Undocumented Payments for Campaign Expenditures  
2006 MCEA Qualifying Period**

NAME	DATE	AMOUNT	PURPOSE
Judson Merrill	2/1/2006	\$200.00	Website Services
Philip Merrill	4/14/2006	\$600.00	Literature
Philip Merrill	5/24/2006	\$625.49	Literature
Judson Merrill	5/31/2006	\$407.35	Website Services
Philip Merrill	5/31/2006	<u>\$500.00</u>	Money Order Costs
Total		<u>\$2,332.84</u>	

## EXHIBIT II

**BARBARA MERRILL CAMPAIGN****Schedule of Campaign Expenditures Lacking Required Documentation  
2006 General Election**

DATE	VENDOR	AMOUNT INVOICED	QUESTIONED AMOUNT	ISSUE
6/21/2006	Mountain Top Productions	\$25,651.75	\$11,164.75	Missing Invoices
7/11/2006	Mountain Top Productions	\$22,044.75	\$7,509.75	Missing Invoices
8/25/2006	Portland Press Herald	\$500.00	\$500.00	Missing Invoice
8/28/2006	Portland Press Herald	\$1,000.00	\$1,000.00	Missing Invoice
10/12/2006	WCSH/WLBZ	\$56,810.00	\$56,810.00	Missing Invoice
10/24/2006	Clear Channel Communications	\$4,324.80	\$4,324.80	Missing Invoice
10/26/2006	Portland Radio Group	\$9,486.00	\$9,486.00	Missing Invoice
11/1/2006	Clear Channel Communications	\$3,541.60	\$3,541.60	Missing Invoice
11/6/2006	Mountain Top Productions	\$54,700.00	\$16,060.75	Missing Invoices
		<u>\$178,058.90</u>	<u>\$110,397.65</u>	

**ATTACHMENT**  
**Merrill Campaign Audit**  
**Comments of Philip L. Merrill**  
**Page 1**

Date: June 28, 2007

Response of Philip L. Merrill, Deputy Treasurer of BarbaraMerrill.Com On Behalf  
BarbaraMerrill.Com and Barbara E. Merrill's Independent Campaign for Governor.

This is our response to Audit Report No. 2006-GV002 of the Barbara E. Merrill campaign for Governor. As audit report is 7 pages long and all the material has been reviewed thoroughly with the Commission's staff and the auditor, this response will be brief.

**Finding 1 - Conflict of Interest.**

***The audit report points out that no law or rule was violated and that there is no "evidence of mis-use or mis-appropriation of public funds."***

There is not a lot we can add to that statement, but there are two factors that may add light to this issue. The Merrill Campaign did not set out to hire me as a campaign consultant. Barbara wanted to retain a consultant from Maine who was experienced and willing to work for an Independent. The first standard significantly limited the pool of eligible candidates, the second standard even more so. Immediately after the Merrill campaign qualified, Barbara Merrill met with Christian Potholm and asked him to play this role in the campaign. After some consideration, Mr. Potholm declined and he subsequently provided his valuable services to the Baldacci campaign.

We were aware of the fact that in the past recommendations have been made to amend the law to prohibit family members from working for publically funded campaigns, but that those recommendations had been specifically rejected by the legislature. Hence we were comfortable that because the Legislature decided to continue to allow such arrangements, it was a viable option.

As a result, an agreement was worked out with Jim Webster, the campaign manager, and Barbara Merrill on behalf of the campaign and Phil Merrill on behalf of Mountain Top Productions. The goal was to produce a wide variety of spots that did not look slick, which featured the candidate taking the issues "head on" while controlling production costs to maximize money to purchase time. While it is always challenging to make objective judgements about the success of a media campaign I will point to the fact that in the final three weeks in which there was ample money for a real TV/radio campaign, the Merrill campaign went from 4 or 5% support to 21 %, while all other campaigns were either stagnant or actually falling.

***Given the undisputed fact that retention of a family member is clearly permitted by Maine law, coupled with the fact that our media campaign was clearly effective as evidenced by the candidate's sharp surge in the latter days of the campaign, both my***

**ATTACHMENT**  
**Merrill Campaign Audit**  
**Comments of Philip L. Merrill**  
**Page 2**

*wife and I feel strongly that the criticism in this finding is unwarranted and patently unfair.*

Finding 2. Undocumented Seed Money. On the first 2 bullets the campaign did not provide complete and accurate reporting for which I take complete responsibility. In fact there was a period in which it did not appear that Barbara Merrill would qualify and I failed to pay as close attention as I should. As to the third bullet, the charge is totally unfair.

As I pointed out to the auditor, I made the deposit at Gardiner Savings into the campaign account. Several days later when I checked the balance, the money was not there. I went to the bank and realized the bank had mistakenly deposited the money into my business account. The bank *immediately* corrected the error. *The error was made by the bank and I was discovered it very quickly.*

Finding 3. There were errors in documenting and reporting money order purchases. On this the campaign labored mightily and still failed. At times the challenge was daunting. Consider this this actual scenario: the candidate and several workers went to a sportsman's show and asked attendees for support. Most of the attendees didn't have check books with them so most bought money orders. The cash was collected. The team ran out of money orders. (The money collected in sale of the money orders can be used for the face value of new ones and the cost of the money order must be paid from the seed money raised.) Now imagine there are three other teams out seeking qualifying contributions. If I was ever to do this again I would create a book keeping system to meet this challenge, but I do not dispute we were overwhelmed this time.

Finding 4. Undocumented payments. We have no dispute with this finding. During the period in which it was unclear that we were going ahead I failed to document a couple of payments as I should have. For example, I owed money to my son Judson for work he did on the website. I was behind in paying him so when I saw him I paid him from cash on hand that I had with me instead of waiting to when I had a check book. But I do believe it is an important distinction that none of these funds were public funds.

Finding 5 Incomplete Expenditure documentation.

*I believe this charge is unfair and completely without merit.* Every payment to these media outlets has been verified. All documentation provided by the stations has been turned over to the auditor. There are no "missing invoices." Admittedly, the way some stations document these purchases is through their log and sometimes it is difficult to tie any ad to a specific check. When the auditor raised this concern I contacted the stations and in response they sent simple declarative statements saying in essence we received check # x and for that commercials were purchased in the weeks of x and z. Those were provided.

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Comments of Philip L. Merrill****Page 3**

When the auditor expressed continued dissatisfaction I asked that he design a form by which the stations might report to his satisfaction. None was provided. I believe the stations gave Mountain Top Video the same documentation that they provided the purchasing agent for every other campaign. That is the documentation we provided. The report points out that "in all instances the proof of payment was on file. I know that there is no question that the money was spent on the purchases. If the Commission wants different documentation than is provided by TV and radio stations then I submit it should develop a form and ask the campaigns to insist stations use them. Assessing a fine when I have gone way beyond what the stations provide would be arbitrary and capricious.